

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LELA MCGEE,

Plaintiff,

v.

TARGET CORPORATION,

Defendant.

Case No. 2:20-cv-00345-KJD-DJA

ORDER

Presently before the Court are Plaintiff's four Trial Briefs (#69/70/71/72). However, the Court interprets them to be Motions in Limine. Defendant responded in opposition (#84/85/86/87).

I. Factual and Procedural Background

This is a negligence action arising from a slip-and-fall on March 25, 2019. The Plaintiff, Lela McGee ("McGee") visited Defendant Target Corporation's ("Target") store in Las Vegas, Nevada, where McGee tripped and fell. (#27, at 14). McGee alleges that her foot became lodged between the display end cap and a metal end cap guard that was bolted to the floor and attached to a counter displaying earphones. (#28, at 3-4). McGee alleges that she suffered injuries to her shin, ankle, neck, and back, and that Target is responsible.

McGee brings four motions in limine to exclude (1) evidence of McGee's marijuana use; (2) arguments regarding McGee's pain symptoms and Paget's disease; (3) arguments regarding McGee's economic damages and Carpel Tunnel Syndrome; and (4) arguments regarding unrelated incidents.

II. Legal Standard

A motion *in limine* is a procedural mechanism made in advance to limit testimony or evidence in a particular area" and is "entirely within the discretion of the Court." Diamond X

1 Ranch, LLC v. Atlantic Richfield Co., No. 3:13-cv-00570-MMD-WGC, 2018 WL 2127734, at
 2 *1 (D. Nev. May 8, 2018). A “motion *in limine* should not be used to resolve factual disputes or
 3 weigh evidence.” IGT v. Alliance Gaming Corp., No. 2:04-cv-1676-RCJ-RJJ, 2008 WL
 4 7084605, at *2 (D. Nev. Oct. 21, 2008). “To exclude evidence on a motion in limine, ‘the
 5 evidence must be inadmissible on all potential grounds.’” Diamond X Ranch, 2018 WL
 6 2127734, at *1 (quoting Indiana Ins. Co. v. General Elec. Co., 326 F.Supp.2d 844, 846 (N.D.
 7 Ohio 2004)). “Unless evidence meets this high standard, evidentiary rulings should be deferred
 8 until trial so that questions of foundation, relevancy and potential prejudice may be resolved in
 9 proper context.” Sims, 550 F. Supp. 3d, at 912, (quoting Hawthorne Partners v. AT&T Tech.,
 10 Inc., 831 F. Supp. 1398, 1400 (N.D. Ill. 1993)).

11 “Irrelevant evidence is not admissible.” Fed. R. Evid. (“Rule”) 402. “Evidence is relevant if:
 12 (a) it has any tendency to make a fact more or less probable than it would be without the
 13 evidence; and (b) the fact is of consequence in determining the action.” Rule 401. “The Court
 14 may exclude relevant evidence if its probative value is substantially outweighed by a danger of
 15 one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue
 16 delay, wasting time, or needlessly presenting cumulative evidence.” Rule 403.

17 Rule 702 permits a “witness who is qualified as an expert by knowledge, skill, experience,
 18 training, or education [to] testify in the form of an opinion or otherwise if: (a) the expert’s
 19 scientific, technical, or other specialized knowledge will help the trier of fact to understand the
 20 evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c)
 21 the testimony is the product of reliable principles and methods; and (d) the expert has reliably
 22 applied the principles and methods to the facts of the case.” The Supreme Court gave expanded
 23 direction on Rule 702 in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). In
 24 Daubert, the Court held that Rule 702 imposed “a special obligation upon a trial judge to ‘ensure
 25 that any and all scientific testimony... is not only relevant, but reliable.’” See Kumho Tire Co. v.
 26 Carmichael, 526 U.S. 137 (1999). The Court expanded this gatekeeping obligation to all expert
 27 testimony. Id. at 147. Daubert “established that, faced with a proffer of expert scientific
 28 testimony, the trial judge, in making the initial determination whether to admit the evidence,

1 must determine whether the expert’s testimony reflects (1) “scientific knowledge,” and (2) will
 2 assist the trier of fact to understand or determine a material fact at issue.” Daubert, 509 U.S. at
 3 592. The “focus must be solely on principles and methodology, not on the conclusions that they
 4 generate.” Id. at 595.

5 “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on
 6 the burden of proof are the traditional and appropriate means of attacking shaky but admissible
 7 evidence.” Id. at 596.

8 III. Analysis

9 A. **McGee’s Marijuana Use**

10 McGee argues that evidence of her marijuana use for pain management is not relevant
 11 because it is not a fact of consequence in determining critical issues in this litigation. (#69, at 4).
 12 McGee was questioned during a deposition about her history of marijuana use and responded
 13 that for the last 25 years, she has smoked marijuana three or four times a week to help manage
 14 her back pain. (#84, at 3-4). McGee seeks to exclude any mention of this during trial because it
 15 “does not make it more or less likely that she was injured when she slipped and fell at
 16 Defendant’s store, yet such evidence has significant potential to cause unfair prejudice and bias
 17 in the jury....” (#69, at 3).

18 Target argues that this testimony is relevant to “causation, injuries, and damages” and that “it
 19 will be used to impeach Plaintiff’s treating physicians who did not consider the longstanding
 20 degenerative conditions and use of marijuana to mask the pain for 25 years.” (#84, at 5). The
 21 Court agrees. At issue in this case is whether Target was negligent. McGee is alleging that
 22 Target’s negligence caused injuries to her back. Whether or not McGee had preexisting back
 23 pain is surely relevant and probative of causation. Therefore, evidence of McGee’s marijuana use
 24 will be admissible during trial and McGee’s motion in limine is denied.

25 B. **McGee’s Pain Symptoms and Paget’s Disease**

26 McGee argues that evidence of her back pain and symptoms being connected to Paget’s
 27 disease¹ should not be admissible. (#70). McGee asserts that Target “failed to provide any expert
 28

¹ Paget’s disease is a bone disease that interferes with a body’s normal recycling process, where new bone tissue is

1 opinions that Paget’s disease caused Plaintiff’s symptoms or injuries, and there is no relevant and
 2 reasonable evidence to support such arguments.” Id. at 3. Target argues that McGee
 3 misunderstands the medical records and that whether or not she has Paget’s disease is directly
 4 relevant to the case. (#85).

5 The Court finds that mention of Paget’s disease is relevant. McGee testified in a deposition
 6 that she was diagnosed with Paget’s disease. (#70-1, at 24). Her medical records also indicate
 7 that her symptoms are consistent with someone who has Paget’s disease. (#70-2, at 62-64).
 8 Whether or not McGee has a degenerative bone disease goes to the issue of causation and
 9 damages. Target has a right to attempt to show that McGee’s injuries did not arise from the slip-
 10 and-fall.

11 McGee points to Williams v. Eighth Judicial Dist. Court of Nev., 127 Nev. 518 (2011) to
 12 argue that “if a defendant ‘traverses the causation theory offered by the plaintiff and purports to
 13 establish an independent causation theory,’ the defendant must produce supporting expert
 14 opinion stated to a reasonable degree of expert probability.” (#70, at 6). However, that case also
 15 held that “when a defense expert’s testimony of alternative causation theories controverts an
 16 element of the plaintiff’s prima facie case where the plaintiff bears the burden of proof, the
 17 testimony need not be stated to a reasonable degree of medical probability, but it must be
 18 relevant and supported by competent medical research.” Williams, 127 Nev., at 521. The court
 19 held in Williams that “if the defense expert’s testimony is used for the purpose of cross-
 20 examining the plaintiff’s expert or to otherwise contradict the plaintiff’s causation theory by
 21 comparing that theory to other plausible causes, the defense expert does not need to state each
 22 additional cause to a greater-than-50-percent probability.” Id. at 530. The court went on to say
 23 that “because the defense expert in this instance is controverting a key element of the plaintiff’s
 24 prima facie case, as long as his or her alternative causation theory or theories are competent and
 25 supported by relevant evidence or research, they need not be stated as being more likely than
 26 not.” Id.

27 _____
 28 gradually replaced by old bone tissue. If the spine is affected, nerve roots can become compressed and cause pain.
 See Paget’s Disease of Bone, MAYO CLINIC, Paget's disease of bone - Symptoms and causes - Mayo Clinic (last visited
 June 2, 2023).

1 Here, Target is attempting to undermine the causation element. Any testimony produced by
2 Target attempting to undermine the cause of McGee's alleged injuries does not need to be stated
3 to a reasonable degree of medical probability. Because of the evidence within the depositions
4 and medical records, the Court finds that a diagnosis of Paget's disease is relevant and supported
5 by competent medical research.

6 McGee will have the opportunity in trial to attempt to poke holes in Target's witnesses and
7 testimony regarding Paget's disease. However, excluding any mention of the disease altogether
8 is improper and the motion is denied.

9 **C. McGee's Economic Damages and Carpal Tunnel Syndrome**

10 McGee argues that Defendant will attempt to argue that McGee's lost wages and income is
11 caused by carpal tunnel syndrome and not the injuries she allegedly sustained at Target. (#71, at
12 3). McGee argues that these arguments should be excluded from trial because Target failed to
13 provide any expert opinions to support that idea, and that there is no relevant and reasonable
14 evidence to support that argument. Id. Target argues that evidence of McGee's carpal tunnel
15 syndrome is relevant and that no expert is required to testify that having pain in your hands
16 makes working with your hands difficult. (#86, at 3, 5).

17 The Court finds that whether McGee has carpal tunnel syndrome that prohibits her from
18 working is relevant to the case. That fact is probative of whether or not her loss of income and
19 wages is caused in full or in part by her carpal tunnel symptoms or her alleged injuries resulting
20 from Target's alleged negligence.

21 Dr. Rimoldi provided an expert report noting references to carpal tunnel in Plaintiff's
22 medical records. (#71-1, at 24). McGee also testified that she had carpal tunnel symptoms from
23 waitressing and that she believed she had been diagnosed with carpal tunnel syndrome. (#71, at
24 4). Because this is relevant to the causation and damages issue, it is admissible. If Target
25 attempts to argue that her carpal tunnel syndrome is an independent theory of causation, then
26 McGee may object. Therefore, the motion regarding argument about carpal tunnel syndrome is
27 denied.

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